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7 Attorneys for Plaintiff
MONSTER ENERGY COMPANY,
8 a Delaware Corporation

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10 **UNITED STATES DISTRICT COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
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13 MONSTER ENERGY COMPANY, a
Delaware corporation,

14 Plaintiff,

15 vs.

16 VITAL PHARMACEUTICALS, INC.,
17 d/b/a VPX Sports, a Florida corporation;
and JOHN H. OWOC a.k.a. JACK
18 OWOC, an individual,

19 Defendants.
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Case No. 5:18-cv-1882

**DECLARATION OF STEVEN N.
FELDMAN ISO PLAINTIFF
MONSTER ENERGY COMPANY'S
OPPOSITION TO DEFENDANTS' *EX*
PARTE APPLICATION TO STAY OR
EXTEND DEFENDANTS'
RESPONSIVE PLEADING
DEADLINE**

DECLARATION OF STEVEN N. FELDMAN

I, Steven N. Feldman, declare as follows:

1. I am an attorney at law duly licensed to practice before all of the courts in the State of California. I am a partner at Hueston Hennigan LLP, counsel of record for Monster Energy Company in this action. I have personal knowledge of the facts set forth in this declaration and, if called as a witness, could and would testify competently to such facts under oath.

2. Hueston Hennigan appeared as counsel in this case on January 31, 2019. Dkt. Nos. 35-37. In the interim period, Monster and Hueston Hennigan have been drafting an amended complaint. This amended complaint reflects recently discovered facts and includes new legal theories developed by current counsel. These substantive additions include: (a) new causes of action brought under California law; (b) allegations of tortious conduct committed by Defendants in California; and (c) wrongful conduct and unfair competition by Defendants independent of their false advertising, including tortious interference with Monster's contractual rights, other intentional torts, and violations of California's Penal Code.

3. Monster intends to get its amended complaint on file as soon as possible in order to streamline these proceedings.

4. On March 20, 2019, Timothy Branson, counsel of record for Defendants in this action, called me to discuss this case. Mr. Branson told me that Defendants intended to file a motion to dismiss Defendant Owoc for lack of personal jurisdiction, a motion to transfer venue, and a motion to stay. Mr. Branson also informed me that, unless Plaintiff stipulated to voluntarily dismiss Defendant Owoco, Defendants planned to file a motion for sanctions against me under Federal Rule of Civil Procedure 11. A true and correct copy Mr. Branson's e-mail to me is attached hereto as **Exhibit 1**.

5. I knew that the amended complaint would moot Owoc's motion to dismiss and substantially affect Defendants' motions to stay and transfer, requiring a

1 second round of briefing on all issues. I also knew that the amended complaint
2 would address Defendant Owoc's jurisdiction argument and significantly bolster
3 Monster's claims.

4 6. Monster could have waited for Defendants to file a motion to dismiss
5 pursuant to Federal Rule of Civil Procedure 12 on the April 1, 2019 deadline, and
6 then filed Monster's amended complaint as of right as early as the next day. But
7 rather than stay quiet and force Defendants to go through that costly exercise, I called
8 Mr. Branson the very next day and suggested that the parties stipulate to the filing of
9 an amended complaint—thus relieving Defendants of their obligation to respond on
10 April 1.

11 7. Mr. Branson initially indicated during our call that Defendants would
12 stipulate. But because Federal Rule of Civil Procedure 15(a)(2) requires an
13 agreement in writing, I followed up with an e-mail to confirm our agreement that
14 same day, March 21, 2019. *See Exhibit 1.*

15 8. I did not receive a response, so I sent a second e-mail to Timothy
16 Branson seeking to confirm our agreement on March 25, 2019. *See Exhibit 1.*

17 9. On March 26, I then received a call from Sean P. Flynn, who is also
18 counsel for Defendants. Mr. Flynn reneged on the agreement I had made with Mr.
19 Branson, stating that Defendants would not stipulate unless Monster provided them
20 with an advanced copy of the amended complaint. Mr. Flynn also indicated that
21 Defendants would not stipulate unless Monster's amendments were minor.
22 Monster's amendments are not minor.

23 10. I was concerned that Defendants would review the amended complaint
24 and refuse to stipulate to its filing—in effect guaranteeing for themselves significant
25 extra time to respond and prepare their defense to Monster's litigation strategy. I
26 therefore could not agree to provide Defendants an advanced copy of the complaint
27 without some commitment that we could eventually file it. Mr. Flynn provided no
28 other proposal to resolve this dispute.

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2 I declare under penalty of perjury under the laws of the State of California that the
3 foregoing is true and correct.

4 11. To be clear, Monster has no intent to waste this Court's or the parties'
5 resources. Monster remains willing to work with Defendants and establish an
6 appropriate schedule so that this case can finally begin in earnest.

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8 Executed on this 28th day of March, 2019, at Los Angeles, California.

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11 /s/ Steven Feldman
12 Steven N. Feldman
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